IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

CRP.No. 2975 of 2001()

AGAINST THE ORDER DATED 31/07/2001 IN EP. 507 /1999 IN OS.293/1986 of PRL.MUNSIFF COURT,THRISSUR

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REVN. PETITIONER:

M/s. Kshemodayam Kuries Ltd. , Chembukkavu Village and Desom, Trissur, represented by its present Chairman, Sisy Thomas.

BY ADV. SRI.VARGHESE C.KURIAKOSE

RESPONDENTS:

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1. John @ Johny, S/o. Maliakkal Kunju Vareeth, Kuriachira Desom, Olloor Village, Trissur Taluk.

2. M.K.Joseph (brother of John @ Jony, S/o. Maliakkal Kunju Vareeth, Kuriachira Desom, Olloor Village, Trissur Taluk.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12/9/2007 ,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.Krishnan, J.

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C.R.P.No.2975 of 2001

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Dated this the 12th day of September, 2007.

ORDER

This Civil Revision Petition is preferred against the order of the Principal Munsiff, Thrissur in E.P.No.507 of 1999 in O.S.No.293 of 1986. By the said order, the court dismissed the Execution Petition against the second respondent. Aggrieved by the same, the decree holder has come up in revision.

2. I perused the order. The documents produced in support of the contentions are Exts.A1 and A2 and PW1 has been examined. Exts.A1 and A2 only relate to the fact that there is a telephone connection in the name of the second respondent. PW1 had contended that the second respondent is having a pension of Rs.3,000/- and he has gone to Gulf Countries for about six years and is working as Security Officer in the U.T.I. Office. This is only attempted to be proved by the oral evidence of PW1. It has to be held that the factum of employment as well possession of immovable property and receipt of pension are all matters, which can be proved by documentary evidence. 2. There is a provision in Order 21 Rule 41(2) of Code of Civil Procedure, which enables the decree holder even before the filing of the Execution Petition to call for the particulars from the judgment debtor and there is a provision dealing with the impact

under Order 21 Rule 42(3) of Code of Civil Procedure. The decree holder has not resorted to that method. One cannot find fault with the court below when it held that when documents can be produced oral evidence may not be substituted. In this Court respondents had not entered appearance and therefore taking into consideration the entire aspects before me, I feel that an opportunity be given to the decree holder to adduce evidence in support of his contentions.

4. Therefore, the order under challenge is set aside and the matter is remitted back to the Executing Court for fresh consideration. After affording equal opportunity to the petitioner as well as the respondents, the court may decide the matter in accordance with law. The revision petitioner is directed to appear before the court below on 22.10.2007.

Civil Revision Petition is disposed of as above.

M.N.Krishnan,
Judge.

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